Bank Pertanian Malaysia Bhd v Rinta ak Dali (A) Chayar ak Dali (F) & Anor

HIGH COURT (MIRI) — ORIGINATING SUMMONS NO MYY-24–56/7 OF 2012
STEPHEN CHUNG J
16 APRIL 2013

Banking — Banks and banking business — Loan agreement — Letter of demand — Default in payment of loan instalments — Demand for parcels of land charged as security for loan facility — Whether letters of demand sent to correct address — Whether bank aware of other addresses — Whether details of loan omitted in letters — Whether rendered letters of demand defective — Sarawak Land Code (Cap 81) — Rules of Court 2012

The plaintiff and the first defendant had entered into an agreement for a loan facility in the sum of RM180,000 secured by the memorandum of charge over the parcels of land belonging to the first and second defendants. When the first defendant defaulted in the instalment payments of the loan, the plaintiff had demanded the defendants to pay the loan instalments. The plaintiff terminated the loan facility and applied to sell the defendants' parcels of land. In opposing the plaintiff's application, the defendants argued that the failure to send the letters of demand to the correct address was defective and in breach of the provisions of the Sarawak Land Code ('Land Code'). The defendants also submitted that the plaintiff's application for an order for sale of the several parcels of land were all native land and were charged to Bank Pertanian Malaysia and the plaintiff's rights to the land and/or any charge or rights to deal with the land were null, void and of no effect. The defendants further submitted that the plaintiff failed to render the details of the principal of the loan, repayments, instalments in arrears, the interest charged and the computation and had therefore failed to adhere to the requirements of the Land Code and/or Rules of Court 2012 ('ROC').

Held, allowing the application with costs of RM1,500:

(1) From the letters of demand sent to the defendants, the plaintiff was obviously aware of other addresses used by the defendants. Although the plaintiff had served the letters of demand at these other addresses, it did not mean that all cause papers or proceedings must be served on the defendants at all these addresses. There was no requirement and no necessity to include these other addresses in the proceedings and to serve all cause papers and proceedings at all these other addresses (see para 8).

(2) The letter of offer, the loan agreement and the memorandum of charge

contained a provision that the proceedings including the cause papers must be served at the address stated. The ROC provided that the originating process would be served either personally on each defendant or sent to the last known address of the defendant. In this case, the originating summons had been served on the first and second defendants. The defendants did not complain that they had not been served with the originating summons. They have since then were able to and have filed several affidavits in opposition to the originating application of the plaintiff (see para 8).

(3) All property, rights and liabilities in respect of native area land in Sarawak continued to be registered in the name of Bank Pertanian Malaysia which had been deemed a native of Sarawak. It was clear that all property, rights and liabilities of Bank Pertanian Malaysia throughout Malaysia were transferred and vested in the plaintiff except all property, rights and liabilities registered in the name of Bank Pertanian Malaysia in respect of native area land in Sarawak which were transferred and vested in the plaintiff, after the plaintiff had been deemed a native of Sarawak. This was to ensure that the plaintiff would comply with and would not infringe the provisions of the Land Code and other legislations in Sarawak in respect of native area land in Sarawak (see para 9).

(4) The plaintiff had exhibited a copy of the charge to the affidavit in support of the originating summons and the originating summons and the affidavit in support have stated the amount remaining due under the charge together with the interest accruing. The plaintiff's affidavit in support had affirmed the amount remaining due, the date of the hearing of the originating summons. The plaintiff had complied with the provisions of O 83 of the ROC (see para 19).

[Bahasa Malaysia summary

Plaintif dan defendan pertama telah memasuki perjanjian untuk kemudahan pinjaman berjumlah sebanyak RM180,000 yang dijamin oleh memorandum caj ke atas tanah yang dimiliki oleh defendan pertama dan kedua. Apabila defendan pertama gagal membayar bayaran ansuran pinjaman tersebut, plaintif menuntut defendan-defendan untuk membayar bayaran ansuran pinjaman tersebut. Plaintif menamatkan kemudahan pinjaman dan memohon untuk menjual tanah defendan-defendan tersebut. Dalam membantah permohonan plaintif, defendan-defendan berhujah bahawa kegagalan untuk menghantar surat-surat tuntutan kepada alamat yang betul adalah cacat dan memungkiri peruntukan Kanun Tanah Sarawak ('Kanun Tanah'). Defendan-defendan juga berhujah bahawa permohonan plaintif untuk perintah jualan beberapa bidang tanah kesemuanya adalah tanah anak watan dan dicajkan kepada Bank Pertanian Malaysia dan hak-hak plaintif kepada tanah dan/atau apa-apa caj atau hak untuk menguruskan tanah adalah batal, tak sah dan tidak menjejaskan. Defendan-defendan selanjutnya berhujah

bahawa plaintif gagal untuk menyerahkan butir utama pinjaman, bayaran semula, bayaran ansuran yang tertunggak, faedah yang dikenakan dan pengiraan dan oleh itu gagal mematuhi kehendak-kehendak Kanun Tanah dan/atau Kaedah-Kaedah Mahkamah 2012 ('KKM').

Diputuskan, membenarkan permohonan dengan kos sebanyak RM1,500:

(1) Daripada surat-surat tuntutan yang dihantar kepada defendan-defendan, plaintif secara jelas sedar mengenai alamat-alamat lain yang digunakan oleh defendan-defendan. Walaupun plaintif telah menyerahkan surat-surat tuntutan ke alamat-alamat yang lain ini, ia tidak bermakna bahawa kesemua dokumen kausa atau prosiding mesti diserahkan ke atas defendan-defendan di kesemua alamat-alamat ini. Tidak terdapat kehendak dan tiada keperluan untuk memasukkan kesemua alamat ini di dalam prosiding dan untuk menyerahkan kesemua dokumen kausa dan prosiding kepada kesemua alamat lain ini (lihat perenggan 8).

(2) Surat tawaran, perjanjian pinjaman dan memorandum caj mengandungi peruntukan bahawa prosiding termasuk dokumen kausa tersebut diserahkan kepada alamat yang dinyatakan. ROC memperuntukkan bahawa proses pemula akan diserahkan sama ada secara peribadi ke atas setiap defendan atau dihantar kepada alamat terakhir defendan yang diketahui. Dalam kes ini, saman pemula telah diserahkan ke atas defendan pertama dan kedua. Defendan-defendan tidak mengadu yang mereka tidak diserahkan dengan saman pemula. Mereka telah semenjak itu dapat dan telah memfailkan beberapa afidavit menentang kepada permohonan pemula plaintif (lihat perenggan 8).

(3) Kesemua hartanah, hak dan liabiliti berkaitan kawasan tanah anak watan di Sarawak berterusan didaftarkan atas nama Bank Pertanian Malaysia yang mana dianggap anak negeri Sarawak. Adalah jelas bahawa kesemua hartanah, hak dan liabiliti Bank Pertanian Malaysia di seluruh Malaysia dipindahkan dan diletakhakkan di dalam plaintif kecuali kesemua hartanah, hak dan liabiliti yang mana didaftarkan di dalam nama Bank Pertanian Malaysia berkaitan kawasan tanah anak negeri di Sarawak yang dipindah dan diletakhak di dalam plaintif, selepas plaintif telah dianggap sebagai anak watan Sarawak. Ini adalah untuk memastikan bahawa plaintif akan mematuhi dengan dan tidak akan melanggar peruntukan Kanun Tanah dan undang-undang Sarawak yang lain berkaitan kawasan tanah anak watan di Sarawak (lihat perenggan 9).

(4) Plaintif telah melampirkan salinan caj kepada afidavit menyokong saman pemula dan saman pemula dan afidavit sokongan telah menyatakan jumlah yang kekal belum dibayar di bawah caj bersama dengan faedah yang terakru. Afidavit sokongan plaintif telah mengesahkan jumlah yang kekal belum dibayar, tarikh pendengaran saman pemula. Plaintif telah mematuhi peruntukan A 83 KKM (lihat perenggan 19).]

Notes

For cases on loan agreement, see 1(2) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 2617–2627.

Cases referred to

HSBC Bank Malaysia Bhd v Tan Sri Datuk Amar Ling Beng Siew [2003] 4 CLJ 763, HC (refd)

Lee Tain Tshung v Hong Leong Finance Bhd & Ors [1991] 3 CLJ (Rep) 138, HC (refd)

Malayan Banking Bhd v Neway Development Sdn Bhd & Ors [2013] 1 MLJ 597; [2012] 9 CLJ 1014, CA (refd)

Perwira Habib Bank Malaysia Bhd v Lum Choon Realty Sdn Bhd [2006] 5 MLJ 21, FC (refd)

Legislation referred to

Bank Pertanian Malaysia Berhad Act 2008
Rules of Court 2012 O 83, O 83 rr 1(1), 3(1), (2), (3), O 94 r 1
Rules of the High Court 1980 O 83
Sarawak Land Code (Cap 81)

Rachel Chung (Chung, Lu & Co) for the plaintiff.
Leslie Linton (Battenberg & Talma Advocates) for the defendants.

Stephen Chung J:

RULING

[1] The plaintiff, by an originating summons ('OS') dated 19 July 2012, applied that the defendants' parcels of land described in sch A and sch B in the OS be sold by public tender under the directions of the court to satisfy an amount of RM181,247.40 as at 29 February 2012 owing to the plaintiff pursuant to a loan facility secured by a memorandum of charge over the said parcels of land.

[2] The facts are as follows. By a letter of offer dated 9 June 2005 the plaintiff granted a loan facility of RM180,000 to the first defendant. The first defendants accepted the loan facility and entered into the loan agreement dated 20 July 2005 secured by the memorandum of charge over the parcels of land belonging to the first and second defendants. The first defendant had defaulted in the instalment payments of the loan. The plaintiff had demanded the defendants to pay the loan installments, subsequently by notice terminated the loan facility and by this OS applied to sell the defendants' parcels of land pursuant to the charge.

[3] The defendants opposed the OS application on the grounds that the

letters of demand were only sent to the defendants' address at Lot 252, Tingkat 2, Taman Jade Manis, Peti Surat 1395, 98008 Miri, Sarawak but had failed to send the letters of demand to Lot 311, Kampung Siwa Jaya, Bakam, 98000 Miri, Sarawak and to Sublot 334, Block 11, Taman Bumiko, Second Floor, Lot 264, Airport Road, 98000 Miri, Sarawak. Similarly, the defendants submitted that the statutory notice in failing to be sent to the defendants' address in Bakam and at Airport Road was defective and in breach of the provisions of the Land Code.

[4] The defendants submitted that the service by the plaintiff of all cause papers pertaining to the proceedings have been served at the wrong address but that none of these addresses at Bakam and at Airport Road appeared in any of the plaintiff's cause papers and or affidavits.

[5] The defendants also submitted that the plaintiff's application for an order for sale of the several parcels of land are all native land and were charged to Bank Pertanian Malaysia. The defendants submitted that the plaintiff seeks to rely on the Vesting Date Order 2008 PU (A)95 published in the Government *Gazette* vesting all the rights, liabilities and assets of Bank Pertanian Malaysia to the plaintiff on 1 April 2008. The defendants submitted that the plaintiff was only conferred with the status of native of Sarawak on 10 October 2008 vide The Land (Dealing in Native Area Land)(Financial Institutions) (No 5) Direction, 2008 dated 9 October 2008 published in the Sarawak Government *Gazette* dated 24 December 2008 Vol LXIII No 38. The defendants submitted that the plaintiff's rights to the land and or any charge or rights to deal with the land were null, void and of no effect: see *Lee Tain Tshung v Hong Leong Finance Bhd & Ors* [1991] 3 CLJ (Rep) 138, *Malayan Banking Bhd v Neway Development Sdn Bhd & Ors* [2013] 1 MLJ 597; [2012] 9 CLJ 1014.

[6] The defendants further submitted that the plaintiff has failed to render the details of the principal of the loan, repayments, installments in arrears, the interests charged and the computation thereof and has failed to adhere to the requirements of the Land Code and or the Rules of Court 2012 ('ROC'). The defendants submitted that they were unable to verify or scrutinise the quantum of interest charged and or the total amounts claimed by the plaintiff. The defendants submitted that the plaintiff's application be dismissed with costs: see *HSBC Bank Malaysia Bhd v Tan Sri Datuk Amar Ling Beng Siew* [2003] 4 CLJ 763, *Perwira Habib Bank Malaysia Bhd v Lum Choon Realty Sdn Bhd* [2006] 5 MLJ 21.

[7] The address of the first defendant is stated in the letter of offer, in the loan agreement and in the memorandum of charge at Lot 252, Tingkat 2, Taman Jade Manis, Peti Surat 1395, 98008 Miri. The address of the second defendant

is similarly stated in the memorandum of charge at the said given address. This was the office address of the second defendant. Clause 18.6.2 of the loan agreement provides that no change in the address of the defendants shall be effective unless notice of the change of address is given to the bank. There is a similar provision in the memorandum of charge. The defendants did not give any notice of change of address to the plaintiff.

[8] From the letters of demand sent to the defendants, obviously the plaintiff was aware of other addresses used by the defendants at Bakam, at Airport Road and in Bintulu. Although the plaintiff has served the letters of demand at these other addresses, it did not mean that all cause papers or proceedings must be served on the defendants at all these addresses. There is no requirement and no necessity to include these other addresses in the proceedings and to serve all cause papers and proceedings at all these other addresses. The letter of offer, the loan agreement and the memorandum of charge contained a provision that the proceedings including the cause papers shall be served at the address stated therein. The ROC provides that the originating process shall be served either personally on each defendant or sent to the last known address of the defendant. In this case, the originating summons had been served on the first and second defendants. The defendants did not complain that they had not been served with the originating summons. They have since then were able to and have filed several affidavits in opposition to the OS application of the plaintiff.

[9] The facts showed that Bank Pertanian Malaysia was previously declared a native of Sarawak. As a native of Sarawak, it was able to deal with native area land. The facts showed that the defendants' several parcels of land were charged to Bank Pertanian Malysia as security for the loan granted to the first defendant. At all material time the dealings and the charge in respect of the defendants' land were legal and valid. The charge was duly registered at the relevant land registry in Sarawak. There is no complaint by the defendants that the charge in respect of their land to Bank Pertanian Malaysia is null, void and of no effect.

[10] The facts showed that Bank Pertanian Malaysia was restructured and became Bank Pertanian Malaysia Bhd under the Bank Pertanian Malaysia Berhad Act 2008. Pursuant to the Vesting Date Order 2008 under the Act, on 1 April 2008 all property, rights and liabilities of Bank Pertanian Malaysia as specified in the sch shall be transferred to and be vested in Bank Pertanian Malaysia Bhd (the plaintiff). The plaintiff is the successor of Bank Pertanian Malaysia.

[11] Pursuant to The Land (Dealing in Native Area Land) (Financial Institutions) (No 5) Direction,2008 ('referred to as Direction No 5'), which

was published in the Sarawak Government *Gazette* and came into force on 10 October 2008, the plaintiff was deemed to be a native of Sarawak to deal with native area land in Sarawak. The defendants submitted that since the plaintiff was only deemed to be a native of Sarawak on 10 October 2008, the property, rights and liabilities of Bank Pertanian Malaysia could not be vested in the plaintiff on 1 April 2008 and that the vesting and or the rights to deal with their native area land were null, void and of no effect. It was argued that there was a lapse or lacunae of about six months between the vesting on 1 April 2008 and the deeming of the plaintiff as a native of Sarawak on 10 October 2008 and that the plaintiff was caught by the lacunae.

[12] The argument may be ingenious but without any merit. Paragraph 2 of Direction No 5 states that the plaintiff shall be deemed to be a native of Sarawak for the purposes or in respect of only the following categories of dealing affecting native area land:

(a) transfer or vesting of any charge registered in the name of any financial institutions which prior to the date of commencement of this Direction had been deemed a native of Sarawak; and

(b) charge over any land classified as native area land registered in the name of a native of Sarawak.

[13] Reading the Vesting Date Order 2008 and the Direction No 5, prior to 10 October 2008 all property, rights and liabilities in respect of native area land in Sarawak continued to be registered in the name of Bank Pertanian Malaysia which had been deemed a native of Sarawak. It is clear that all property, rights and liabilities of Bank Pertanian Malaysia throughout Malaysia were transferred and vested in the plaintiff on 1 April 2008 except all property, rights and liabilities registered in the name of Bank Pertanian Malaysia in respect of native area land in Sarawak which were transferred and vested in the plaintiff on 10 October 2008, after the plaintiff had been deemed a native of Sarawak on that date. This was to ensure that the plaintiff would comply with and would not infringe the provisions of the Sarawak Land Code (Cap 81) and other legislations in Sarawak in respect of native area land in Sarawak.

[14] Pursuant to Direction No 5, the plaintiff was authorised to deal with native area land in Sarawak from 10 October 2008. The defendants did not complain that the plaintiff had dealt with the defendants' native area land prior to 10 October 2008 and there is no evidence that the plaintiff had dealt with the defendants' land prior to this date. All such dealings prior to 10 October 2008 were by Bank Pertanian Malaysia. The affidavit evidence showed that the plaintiff only demanded and issued the letters of demand, the statutory notice and the OS in 2012. In this case, at the material times, the plaintiff is a native

of Sarawak and authorised to deal with the defendants' native area land. There is no merit on this ground of objection. A

[15] On the next issue raised, the defendants have submitted that the plaintiff has failed to provide the details of the principal sum due and owing, the repayments made, the installments in arrears, the interest charged and the computation thereof and has infringed the provisions of O 83, in particular pursuant to O 83 of the Rules of the High Court 1980 ('RHC'). B

[16] This OS was filed on 19 July 2012. O 94 r 1 of the Rules of Court 2012 ('ROC') provides that the Rules of the High Court 1980 ('RHC') and the Subordinate Courts Rules 1980 were repealed. Order 94 r 3(2) provides that all pending actions and applications that are commenced before the date of coming into operations of these Rules shall, from the date of coming into operations of these Rules on (1 August 2012), proceed in accordance with the provisions of these Rules. Therefore O 83 of the RHC no longer applies to this action and there is no requirement for the plaintiff to provide the details prescribed under O 83 of the RHC. There is not a similar provision in the ROC. From 1 August 2012, the ROC have simplified some of the procedures regarding litigation under the Rules. C D E

[17] Order 83 r 1(1) of these Rules provides that this order applies to any action by a chargee or chargor or by any person having the right to foreclosure or redeem any charge, being an action in which there is a claim including for (a) payment of moneys secured by the charge, (b) sale of the charged property and foreclosure. F

[18] Order 83 r 3(1) provides that the affidavit in support of the originating summons by which an action to which this rule applies is begun shall comply with the following provisions of this rule. This rule applies to a charge action for delivery of possession or payment of moneys secured by the charge or both. Order 83 r 3(2) provides that the affidavit shall exhibit a copy of the charge. Order 83 r 3(3) provides that the charge shall give the particulars of the amount remaining due under the charge as at the hearing of the OS. G H

[19] In this case, the plaintiff has exhibited a copy of the charge to the affidavit in support of the OS and the OS and the affidavit in support have stated the amount remaining due under the charge together with the interest accruing thereon. The plaintiff's affidavit in support dated 15 February 2013 has affirmed the amount remaining due as at 26 February 2013, the date of the hearing of the OS. The plaintiff has complied with the provisions of O 83 of the ROC. I

[20] The plaintiff's application is allowed in terms of the prayers in the OS with costs of RM1,500 to be paid by the defendants.

Application allowed with costs of RM1,500.

Reported by Afiq Mohamad Noor